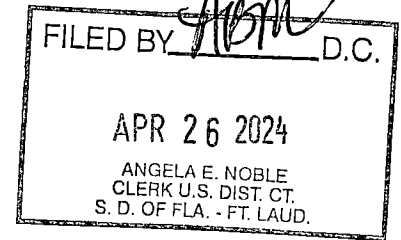


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION



STEVEN B. AUBREY,

Plaintiff,

No: _____

v.

JOHN D. FRY;
BRIAN D. FILLINGIM; and
GLEN A. FITZMARTIN,

JURY TRIAL DEMAND

Defendants.

_____ /

COMPLAINT

Plaintiff, Steven B. Aubrey, files this Complaint against Defendants John D. Fry, Brian Fillingim, and Glen A. Fitzmartin and alleges as follows:

I. OVERVIEW

1. A police officer's lies in his Affidavit for Arrest Warrant, which was used to falsely arrest Plaintiff and his lies to a Dallas County Grand Jury, which caused the indictment of Plaintiff, are the basis of many of Plaintiff's claims in this civil action.

2. Following 625 nights in jail and two weeks prior to the trial, a certain defendant requested that the case against Plaintiff be dismissed, proof that Defendants worked together to arrest and imprison Plaintiff without proof but with hope they would eventually find it.

3. Plaintiff seeks damages against Defendants for committing acts under color of law, depriving Plaintiff his rights secured by the Constitution and laws of the United States, for defaming Plaintiff, and for causing Plaintiff to sacrifice approximately 21 months of his life

waiting in jail until one of the defendants “determined that the State is unable to make a prima facie case at this time.”

4. Certain defendants, while acting in their capacities as a police officer, an assistant district attorney, and a county court criminal division judge, deprived Plaintiff his liberty without due process of law, thereby depriving Plaintiff of his rights, privileges and immunities as guaranteed by the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States.

5. Under color of law, defendants committed official misconduct, deprived Plaintiff his rights under the Constitution, deprived Plaintiff his rights under federal law and federal statutes. Defendants committed numerous torts under Florida law. Defendants maliciously and proximately caused injury to Plaintiff, including but not limited to personal humiliation, mental suffering, impairment of reputation and lost earnings capacity.

II. JURISDICTION

6. This Court has subject matter jurisdiction under 18 U.S.C. §242 because this is an action asserting claims based on deprivation of rights under color of law.

7. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 because this is an action asserting claims based on federal law.

8. This Court has diversity jurisdiction pursuant to 28 U.S.C. §1332 because damages exceed \$75,000.00 and some defendants are from different states.

9. This Court has jurisdiction pursuant to 28 U.S.C. §1343 because this is an action asserting claims based on the deprivation of civil rights due to color of law and/or conspiracy under 28 U.S.C. §1343(a)(b).

10. Plaintiff alleges civil rights violations including but not limited to claims of false arrest, false imprisonment, conspiracy under color of law and others.

11. This Court has subject matter jurisdiction under 28 U.S.C. §1367(a) because Plaintiffs' state-law claims are so related to the federal claims in this action that they form part of the same case or controversy.

12. This Court has jurisdiction pursuant to 42 U.S.C. §§1981(a); 1982; 1985; 1986; and 1988 because this is an action asserting deprivation of Plaintiff's rights.

13. This Court has jurisdiction pursuant to 42 U.S.C. §1983 regarding deprivation of constitutional rights under the I, IV, VI, and XIV Amendments, acting under color of law.

14. This Court has jurisdiction pursuant to 42 U.S.C. §1985 regarding the power to prevent a conspiracy, depriving Plaintiff's rights.

15. Plaintiff, a gay man, is a protected member of a minority class for civil rights violations under the Mathew Sheppard and James Byrd, Jr. Hate Crime Act, which includes violations based on Plaintiff's sexual orientation.

16. Each and all of the acts (or threats of acts) alleged herein were done by defendants under color and pretense of the statutes, ordinances, regulations, customs and usages within the meaning of 42 U.S.C. §1943.

III. VENUE

17. Venue is proper in this Court pursuant to 28 U.S.C. §1391 as a substantial part of the events giving rise to the claims occurred when Plaintiff resided in Broward County and because Defendants' intentional, tortious and unlawful conduct substantially occurred, within this judicial district; and Plaintiff and one of the defendants currently reside in and transact their

principal businesses within this judicial district where Plaintiff has suffered tortious injuries as a result of Defendants' conduct.

18. The Court has specific jurisdiction over certain defendants pursuant to *Fla. Stat.* § 48.193(1)(b) as certain defendants entered into the State of Florida with sufficient minimal contacts and committed intentional torts in relation to Plaintiff, or in the alternative, have committed tortious conduct outside of the State of Florida with the specific intent and knowledge that an injury would occur in the State of Florida.

19. One of the defendants traveled to South Florida to participate in Plaintiff's false arrest and false imprisonment.

20. Additionally, as a result of Plaintiff's injury, he is now is an indigent resident of Broward County and unable to afford travel. If venue were in Texas, Plaintiff would suffer material injustice considering his financial restrictions.

21. Weighing the factors affecting the convenience of litigants, the only proper venue for this case is the Southern District of Florida.

IV. PARTIES

22. Plaintiff Steven B. Aubrey is a resident of Broward County, Florida.

23. Defendant John D. Fry ("**Fry**") is a resident of Broward County, Florida and may be served with process at his office, Broward County Courthouse, 201 SE 6th Street, Chambers – 5125, Fort Lauderdale, Florida 33301.

24. Defendant Brian Fillingim ("**Fillingim**") is a resident of Dallas County, Texas and may be served with process at his office, Jack Evans Police Headquarters, 1400 S. Lamar Street, Dallas, Texas 75215.

25. Defendant Glen A. Fitzmartin (“**Fitzmartin**”) is a resident of Dallas County, Texas and may be served with process at his office, 133 North Riverfront Boulevard, Dallas, Texas 75207.

V. FACTS

A. Background

26. On May 13, 2016, Ira Tobolowsky died in the garage in his home in Dallas Texas. The garage had been consumed by fire.¹

27. Immediately after Ira Tobolowsky’s death and while the fire was still being fought, his good friend and adversary of Plaintiff, Stephen Schoettmer, convinced Dallas Police Department (“DPD”) detectives, numerous Dallas-area television stations, and print publications that Plaintiff was the principal suspect.²

28. A media circus ensued, which included stories that defamed Plaintiff across this nation and as far away as London and Israel.

29. DPD detectives convinced Texas state criminal district court judges from whom they requested warrants that Plaintiff was hiding from police detectives and avoiding public view to conceal burns on his body.

30. Not only were none of these statements truthful, DPD also knew them to be untrue. DPD had full knowledge of Plaintiff’s whereabouts and actions via credit card information, phone data, and eyewitnesses in the days immediately following Tobolowsky’s death.

¹ Five months after the fire, the medical examiner ruled the death a homicide. However, many believe there is evidence the fire was an accident.

² Stephen Schoettmer further alleged that Plaintiff sent Ira Tobolowsky a death threat email a few days prior to the fire and death, an allegation later determined to be false.

31. Beginning on May 16, 2016, and for a period spanning nearly five months, Dallas Fire-Rescue Department and the DPD submitted 11 perjured affidavits for search warrants to local district criminal judges. Each of the perjured affidavits involved Plaintiff, and/or his husband, Brian Vodicka (“**Vodicka**”).

32. Despite the 11 search warrants they gathered, detectives had been unable to come up with facts or evidence to support their contention that Plaintiff was involved in Ira Tobolowsky’s murder because Plaintiff is innocent, which upon information and belief the detectives knew very well.

33. The obsession with Plaintiff and the fact that other avenues of investigation were barely explored if explored at all suggests that finding Ira Tobolowsky’s murderer as well as possible motives were less important than finding a convenient patsy for the horrific death of a highly influential, highly connected citizen from a powerful extended family, many of whose members are ensconced in law firms and judgeships throughout Dallas and Texas. DPD and the media targeted an aging, bankrupted gay man who had been an upstanding, hard-working member of his community throughout his life, who had no record of violence, had never threatened Ira Tobolowsky or anyone else, and who had no motive to harm much less kill him.

B. DPD Harassment

34. On May 19, 2016, Plaintiff and Vodicka woke in their residence where they remained until middle afternoon.

35. DPD homicide detective Robert Ermatinger (“**Det. Ermatinger**”) possessed the fraudulently obtained search warrants for Plaintiff and Vodicka, issued the night before by Judge Howard. The search warrants authorized in pertinent part:

“... [to] examine, photograph and fingerprint said Steven Aubrey within accepted practices.”

“... [to] examine, photograph and fingerprint said Brian Vodicka within accepted practices.”

36. Although the homicide detectives had publicly indicated on May 18 that they had been unable to locate Plaintiff and Vodicka during the previous six days, they and their supervisor had known their whereabouts exactly. Plaintiff and Vodicka’s extensive call, text, and cell tower trail, as well as credit card information already in the possession of DPD, indicated clearly that Plaintiff had been in Dallas since May 13 and that Vodicka had traveled to Austin for a night on May 17 and returned on May 18, then both stayed in their apartment that night. A simple search for Plaintiff and Vodicka’s cars in front of their residence would have made that clear, as presumably happened.

37. However, for reasons unknown, DPD detectives failed to attempt contact with Plaintiff by phone or by legally knocking on the door and announcing themselves, as required by law.

38. Instead, Det. Ermatinger, many other DPD officers; and at least one DPD supervisor, planned a Dallas Police Department General Order 313.07 “stakeout and high-risk apprehension operation” to execute two warrants to “examine, photograph, and fingerprint” Plaintiff and Vodicka.

39. This plan demonstrates that the officers on the scene on May 19 did not make split-second judgments but had instead devised a preplanned high-risk apprehension designed to frighten and intimidate Plaintiff and Vodicka as well as put their lives at risk simply to execute a warrant to examine, photograph, and fingerprint them, though they posed no threat.

40. Prior to its execution, DPD agreed with the Sheriff's Department to work together on this stakeout and high-risk apprehension of Plaintiff and Vodicka, in violation of the U.S. Supreme Court's knock-and-announce minimum policy.

41. On May 19, following a stakeout in concealed positions and with disregard for Plaintiff and Vodicka's right to knock-and-announce, the unidentified DPD officers and Sheriff's Department deputies assaulted Plaintiff and Vodicka with deadly force and putting their lives at risk without cause.

42. Unidentified police officers and sheriff's deputies waited in concealed positions for Plaintiff and Vodicka to exit their residence. In late afternoon, Plaintiff and Vodicka exited their residence and walked to their parked vehicle. On that summer day, both Plaintiff and Vodicka were wearing shorts and short-sleeved shirts, holding nothing in their hands and carrying nothing beyond wallets, keys, and cell phones in the pockets of their shorts.

43. When Plaintiff began to back the vehicle out of the driveway, they were ambushed with a custom and practice reserved for the likes of Pablo Escobar. Unmarked cars traveling at very high speeds blocked Plaintiff's vehicle from every angle. In what appeared to be an attack by lawless maniacs, drivers slammed their brakes as persons in unmarked clothing jumped from vehicles with firearms drawn and pointed at Plaintiff and Vodicka as they descended upon Plaintiff's vehicle.¹⁹ Though the couple posed no threat to the safety of anyone, the approximately 15 to 20 threatening gunmen screamed at Plaintiff and Vodicka to get out of the car as they pointed firearms at them. The attackers then forced Plaintiff and Vodicka on the concrete with loaded guns pointed at their heads and the barrel of one gun actually touching Plaintiff's head. One of the gunmen who pinned Vodicka to the ground said in a low voice, "You know what you did, faggot."

44. There is no evidence Plaintiff and/or Vodicka posed a threat or exhibited threatening behavior.

45. There is no evidence that the unidentified officers and deputies were in imminent danger or in fear of serious bodily injury. There were no signs of any danger that would indicate or suggest that the use of deadly force was justified.

46. Neither the DPD nor the sheriff deputies had authority to arrest Plaintiff or Vodicka. Judge Howard did not issue arrest warrants on Plaintiff or Vodicka. There was no cause to believe the couple might be armed, and there was no cause to believe Plaintiff or Vodicka intended to resist. Therefore, DPD's well-defined stipulations for use of a high-risk apprehension in no way comported with the situation that was presented on May 19, which involved examining, photographing, and fingerprinting Plaintiff and Vodicka.

47. DPD has a pattern, practice, history, and custom of using excessive force, false arrest, and false imprisonment against minorities and those with few resources, including approaching with guns drawn when there is no imminent threat of bodily harm or other justifiable reason to do so.

C. DPD's First False Arrest and First False Imprisonment

48. On May 19, 2016, following the DPD's unlawful stakeout and high-risk apprehension to examine, photograph, and fingerprint Plaintiff and Vodicka, unidentified DPD officers unlawfully arrested the two men without an arrest warrant and without Plaintiff or Vodicka's consent.

49. Neither Plaintiff nor Vodicka actively resisted or evaded arrest.

50. Instead of examining, photographing, and fingerprinting Plaintiff and Vodicka at their residence, unidentified DPD officers physically seized the men, forced them to the concrete

while pointing loaded firearms at them, handcuffed them against their will, forced them into separate squad cars, and took them to police headquarters without their consent, depriving them of their liberties and violating Plaintiff and Vodicka's constitutional rights under the Fourth Amendment.

51. Plaintiff and Vodicka had not yet eaten on May 19, and were on their way to a restaurant for yet another appearance in public when the tactical division attacked them. Det. Ermatinger and other DPD officers then held Plaintiff and Vodicka against their will for approximately 9 hours to interrogate them without corresponding warrant.

52. As part of the imprisonment and interrogation, Det. Ermatinger and other DPD officers refused Plaintiff's requests of food and use of a restroom for 9 hours. Vodicka, in a separate interrogation room, was given a tiny snack required to take his medication and access to a restroom because he was willing to talk to Det. Ermatinger and others. During this period, Vodicka explained in detail his whereabouts from May 13–19, confirmed by the credit card and phone record trail.

53. Plaintiff was punished for not complying with Det. Ermatinger's warrantless custodial interrogation, and he was not given a crumb to eat for the day of May 19, unlike other properly arrested prisoners and inmates locked up by DPD.

54. DPD officers arrested Plaintiff and Vodicka without arrest warrants. Without cause, DPD imprisoned the men for approximately 9 hours. Because Plaintiff did not participate in the forced interrogation, DPD imprisoned both men against their will for approximately 9 hours and refused to feed Plaintiff or permit him use of a restroom.

D. DPD's Second False Arrest and Second False Imprisonment

55. On October 20, 2016, DPD entrapped Aubrey for a criminal prostitution charge.

56. More than five months after Ira Tobolowsky's still unexplained death, an unknown person using the name "Ryan" sent a text to Plaintiff's work-related number associated with his ad in masseurfinder.com. "Ryan" requested a massage at the Hilton Anatole hotel, approximately 8.5 miles from Plaintiff's residence.

57. Following a few texts, at 11:00 am Ryan asked Plaintiff if they could meet for drinks in the bar and then go to the room for the massage. Plaintiff responded at 11:01 am that his business was serious and declined.

58. Ryan was silent for 20 minutes. Upon information and belief, DPD had wanted to avoid paying for a room and to publicly bust Plaintiff for prostitution in the bar. Upon information and belief, DPD was obtaining approval to book a room at the Hilton hotel to entrap Plaintiff.

59. At 11:12 am, Plaintiff sent Ryan a text stating: "I assume that we do not have an appointment and 2 pm is off?"

60. Finally, at 11:20 am, Ryan replied, saying: "We are still on for 2." Plaintiff asked Ryan for the room number, and Ryan responded he had not checked in yet and would let Plaintiff know. Later, Ryan sent the room number and they agreed to meet at 2:15 pm.

61. Plaintiff unpacked his massage table and supplies, entered the hotel, and several minutes later knocked on the door of Room 1095. "Ryan" answered and let him in.

62. As Plaintiff was setting up his table, Ryan repeatedly tried to give Plaintiff money. Plaintiff told him he did not take money up front before the session.

63. At approximately 2:25 pm, Ryan put money on the desk and excused himself into the bathroom. Moments later, several unidentified uniformed DPD officers with guns flashing busted through the front door and arrested Plaintiff.

64. The officers walked Plaintiff out of the hotel in handcuffs, leaving his belongings behind. Before shutting the door of the squad car, one of the officers held up a clear plastic bag with money in it and asked, "This is the money you accepted, right?" Plaintiff said no he did not. The officer asked the same question several times with small variations, but Plaintiff did reply in the affirmative.

65. Plaintiff's arrest was against his will, and the restraint was unreasonable under the circumstances. Plaintiff was imprisoned briefly before paying a bond to effect his release from jail.

66. Unidentified DPD sources immediately began distributing false information about the arrest for "prostitution" to local media outlets, all designed to cast Plaintiff in the worst possible light to further damage Plaintiff and Vodicka. The false information was published in *D Magazine's* Article as follows: "Aubrey agreed to masturbation and sexual intercourse for \$300." This is a blatantly false statement. There is no evidence whatsoever to support these fabricated statements.

67. To create the impression that Plaintiff had accidentally run into an ongoing police operation at the hotel and had not been set up by DPD, DPD falsely told the media that Plaintiff was arrested because "police were running an undercover investigation into the website masseurfinder.com." Upon information and belief, police were not investigating the website and "Ryan" did not call any other number advertised on masseurfinder.com. Plaintiff was the lone target, and DPD entrapped and then falsely arrested him.

68. Because DPD arrested to harass him as well as to isolate and frighten Vodicka. DPD's evidence did not support the allegations, the State of Texas never prosecuted the case and the charges were dropped. Nevertheless, to harass Plaintiff further, the State held the prostitution

charge on the books for two years, requiring Plaintiff to pay an attorney to make 14 appearances at hearings until the charges were dropped just a few days before the statute of limitations would run on the charge and the proceeding was terminated.

69. From the moment of his arrest, Plaintiff suffered humiliation and public ridicule. Plaintiff had never been implicated in or arrested for prostitution, and the public shaming on false charges is humiliating and painful. The agony is compounded by the knowledge that the police officers in charge of investigating the matter prosecuted him on a completely baseless action. All of this caused and continues to cause Plaintiff to suffer depression, insomnia, nightmares, and constant anxiety of the most extreme nature. Plaintiff's and Vodicka's reputations have been permanently damaged, including Plaintiff's professional reputation causing economic loss.

70. The DPD officers who participated in the "sting" operation were government officers. DPD officers had no basis to investigate Plaintiff as there had never been a complaint filed about his business practices. Without probable cause, DPD conducted the sting operation on Plaintiff alone.

71. DPD exposed Plaintiff to ridicule as, once again, they leaked his arrest to the media so that Plaintiff's face and picture would be prominently displayed and featured in the *Dallas Morning News* and linked to prostitution

E. Warrantless Search and Seizure

72. On October 20, 2016, Vodicka woke from a groggy sleep to find Det. Ermatinger perched next to him in bed, tapping Vodicka's leg, and DPD homicide detective Det. Scott Sayers ("Det. Sayers") standing next to him in Vodicka's darkened bedroom.

73. Just as Plaintiff was being falsely arrested across town for prostitution, Det. Ermatinger and Det. Sayers had illegally entered Plaintiff's and Vodicka's residence and the intimate space of their bedroom without a warrant.

74. Minutes before, Vodicka had heard knocking while sleeping, but when he went to the door, he could see no one through the peephole. In response, Vodicka attempted to call Plaintiff at 2:29 pm and again at 2:30 pm, the very minutes Plaintiff was being arrested. At 2:31 pm, Vodicka sent Plaintiff a text, stating: "Someone knocking/I can't see anybody," but Plaintiff could not reply because his phone had been confiscated.

75. Vodicka went back to sleep after sending Plaintiff the text.

76. Minutes later, Det. Ermatinger and Det. Sayers illegally entered Plaintiff's and Vodicka's apartment, without a warrant and with confirmed knowledge that Plaintiff was not present.

77. Det. Ermatinger and Det. Sayers had gained entry into the apartment via a key given to them by the men's landlord after the detectives lied to her about "conducting a welfare check."

78. Neither Det. Ermatinger nor Det. Sayers had attempted to call Vodicka to check his welfare. Instead, they trespassed into the apartment and into the bedroom where Vodicka slept.

79. The first words from Det. Ermatinger's after Vodicka awoke were: "We arrested Steve."

80. Upon information and belief, Det. Ermatinger's and Det. Sayers' intention was for Vodicka to believe Plaintiff had been arrested for the murder of Ira Tobolowsky and to interrogate Vodicka without the presence of an attorney and/or Plaintiff.

81. Upon information and belief, Det. Ermatinger and Det. Sayers were seeking incriminating and/or self-incriminating statements from Vodicka, whom they viewed as “fragile,” loquacious, vulnerable, and heavily medicated.

82. Det. Ermatinger’s and Det. Sayers’ illegal entry shocked and frightened Vodicka.

83. Following months of harassment neither the DPD detectives nor the district attorney attempted to present the evidence, or lack thereof, to a grand jury. The investigation that was marred by improper influence and tunnel vision became a cold case.

F. DPD’s Third False Arrest and Third False Imprisonment

84. In 2021, Defendant Fillingim became a new detective with the DPD Special Investigations Unit and as such, he took an interest in the Ira Tobolowsky cold case. Determined to make an impact with his new position, the detective became resolute in his campaign to arrest Plaintiff for the murder of Ira Tobolowsky, though there had been no new developments in the five-year investigation.

85. On April 27, 2022, without evidence, Plaintiff was arrested based upon Fillingim’s false representations in his Affidavit for Arrest Warrant and at age 61, for the first time in his life, Plaintiff spent his first of 625 nights in jail. (Soon after, Fillingim lied to a grand jury causing Plaintiff to be indicted.) Still there were no facts or evidence connecting Plaintiff to the crime.

86. Fillingim’s Affidavit for Arrest Warrant had no physical evidence connecting Plaintiff to the Ira Tobolowsky’s death, it contained the most irrelevant circumstantial evidence (Plaintiff lived in the same city at the time of the death and Vodicka had a book about future crimes on the internet), and there was no motive.

87. The April 25, 2022 Affidavit for Arrest Warrant included the following to support probable cause: "The evening of the murder, Mr. Vodicka calls and makes a reservation under Suspect Aubrey's name at Lawry's Prime Rib. Suspect Aubrey and Mr. Vodicka go to their reservation the day after the murder, May 14th, and spend \$146.14 almost triple what they had previously spent at any restaurant in the last 4 months."

G. Trial by Media

88. The media circus surrounding Plaintiff, which began May 13, 2016, experienced a rebirth with his arrest for murder. The smear campaign included dozens of stories that aired on television, appeared in print publications, and were published on the internet, many in the South Florida market.

89. On April 28, 2022, Local 10 News aired on television a report, which falsely stated Plaintiff was a "fugitive" who "had been living on the lam for years" and was "accused of brutal murders in Dallas." However, Plaintiff had never been a fugitive, had never been "on the lam," and was not accused of multiple murders.

90. The Local 10 News website, Local10.com, published the same defamatory comments.

91. On April 28, 2022, 7News Miami published a story on its website titled *Texas man wanted for murder of lawyer caught in South Florida* by Vanessa Medina. It states that according to police, in May 2016, "Aubrey set Tobolowsky on fire in his garage"

92. The story continues: "Ultimately, information, evidence gathered during the years-long investigation resulted in us making the arrest." However, following Plaintiff's near 21 months of incarceration, he was not surprised there was no information or evidence gathered in the years-long investigation as he had nothing to do with the crime.

93. According to the Tobolowsky family's multiple statements published in various publications, which corroborated their statements in interviews with DPD detectives, they had no idea who might want to hurt Ira Tobolowsky. Yet the 7News Miami story falsely stated: "When asked if Tobolowsky had any enemies, his family immediately pointed to Aubrey."³

94. Finally, the 7News Miami story stated: "there was finally some evidence that would tie Aubrey to this murder. Dallas Police have not released or said what evidence led to the connection of Aubrey for the murder of Tobolowsky." Clearly, there was no evidence to be "released or said" that connected Plaintiff to the murder, which is the reason the charges were ultimately dismissed.

H. No Writ of Habeas Corpus Hearing and the Extradition

95. The State of Texas was attempting to effect Plaintiff's extradition from Florida to Texas but Plaintiff wanted to exercise his right to challenge the legality of his arrest as he, his attorney, and any person with average intelligence who read Fillingim's Affidavit for Arrest Warrant would overwhelmingly conclude there was no probable cause to support Plaintiff's arrest, imprisonment, and/or extradition.

96. Plaintiff's Broward County extradition case was assigned to Defendant Fry, a county court criminal division judge, who in the beginning treated Plaintiff with respect and he exhibited a completely fair and unbiased demeanor.

97. Fry was initially agreeable with Plaintiff filing a motion for writ of habeas corpus to be followed by a hearing, as is Plaintiff's constitutional right and Fry's duty as a judge.

³ Not only did the family not immediately point to Plaintiff, when Ira Tobolowsky's widow, Debbie Tobolowsky went to police headquarters to be interviewed in Interview Room #3 by DPD detective Robert Ermatinger on May 24, 2016 (11 days following the death), she never once mentioned Plaintiff's name. Michael Tobolowsky, Debbie's son, joined the interview and he also did not utter Plaintiff's name. Instead, the Investigative Report reflects: "Debra and Michael stated Ira had recently been approached by a semi homeless girl about getting money (inheritance from a bank. She would call the house at all times, including late hours (3am). Michael or Steve Shotner has her info."

98. Plaintiff hired a very respected attorney to pursue the writ of habeas corpus and at a cost of \$40,000, a very thoughtful and detailed motion of 138 pages including exhibits was filed on July 20, 2022.

99. For reasons unknown, Fry ordered a brief hearing to discuss the upcoming evidentiary hearing on the motion for writ of habeas corpus and contrary to case law precedent, he stated that he would only consider the motion's argument on document compliance and would not consider the other half of the motion on probable cause (or lack thereof).

100. However, Plaintiff's attorney received a package of documents entitled Governor's Warrant of Extradition and the extradition documents were legally insufficient for many reasons, including;

- The Indictment is legally insufficient on the charge of Capital Murder pursuant to Texas Penal Code Sec. 19.03 (2) (a felony murder theory), which states that "the person intentionally commits the murder in the course of committing or attempting to commit kidnapping, burglary, robbery, aggravated sexual assault, arson, obstruction or retaliation, or terroristic threat under Sec. 22.07 (a)(1),(3),(4), (5),(6)." The Indictment states, in part, "The Defendant was then and there in the course of committing and attempting to commit the offense of burglary of said deceased." The Indictment is legally insufficient in that it alleges no facts in support of the burglary charge, i.e., enter or remain without permission.
- Pursuant to the Texas Code of Criminal Procedure Art. 20 A., The foreperson of the Grand Jury is required to file a memorandum of the vote of the Grand Jury. An indictment requires at least nine (9) grand jurors to vote in favor of

the indictment. No such memorandum has been attached to the Indictment, or otherwise provided.

- Art. 20 A. 302 requires the District Attorney to endorse on the Indictment the name of each witness on whose testimony the Indictment was found. The Indictment does not list any witness who testified before the Grand Jury.
- The Texas Code of Criminal Procedure also requires the Indictment to be signed by the foreperson of the Grand Jury. The signature on the Indictment is clearly not a personal signature.
- The Texas Code of Criminal Procedure also requires the signature of the foreperson to be verified on the Indictment. The Indictment presented to the Accused is not verified.
- The Application for Requisition of the Accused Steven Aubrey contains a sworn statement that the Accused, with a view towards avoiding prosecution, fled from the jurisdiction of this state and is now a fugitive from justice. The Accused Steven Aubrey did not flee. The Accused is not now nor has he ever been a fugitive. The Affidavit for the Arrest Warrant acknowledges that Mr. Aubrey moved to Florida in 2016. After moving to Florida with his spouse Brian Vodicka, Mr. Aubrey and Mr. Vodicka purchased a home in Broward County in their own names. Mr. Aubrey also continued litigation against D Magazine Partners, L.P.; Allison Media, Inc.; Jamie L. Thompson; Robert L. Ermatinger Jr.; Scott R. Sayers; Eric Vaughn Moyé; City of Dallas, Dallas County, Texas; and John Does 4–20 all whose true names are unknown, in the matter of *Steven B. Aubrey and Brian E. Vodicka vs. D Magazine Partners et*

al., in the U.S. District Court for the Northern District of Texas, Dallas Division, Civil Action No.: 3:19-CV-00056-B. (See attached Exhibit D.) That litigation began January 8, 2019.

- For these reasons alone, the request for extradition should be denied. The Governor's documents do not comply with the requirements of Fla. Stat. 941.03.

101. But none of that concerned Fry. He began the status update hearing by stating that he had spoken with the Tobolowsky family. Plaintiff speculates the ex parte hearing was the cause of Fry's complete change of disposition. It was abundantly clear that Fry did not read the filed motion, he was disrespectful to Plaintiff, to Plaintiff's attorney, he appeared angry, and on July 28, 2022, Fry ruled that he would not conduct a hearing on Plaintiff's motion for writ of habeas corpus.

102. Plaintiff spent 126 days in the Broward County jail with the expectation that a court would make right the complete desecration of his rights under the constitution and state law but on August 31, 2022, Plaintiff was extradited to Texas where the search for any kind of evidence would continue.

I. The State never had a case

103. On January 12, 2024, two weeks before trial, the Dallas County District Attorney, Defendant Fitzmartin, filed a motion to dismiss the prosecution against Plaintiff stating "it has been determined that the State is unable to make a prima facie case at this time" and Plaintiff was finally released from confinement. If the State was unable to make a case on the 625th day of Plaintiff's incarceration, then it stands to reason the State was not able to make a case the week, or month, or year before Fitzmartin asked the court to dismiss the case releasing Plaintiff. The

State never had a case and Fitzmartin let Plaintiff unnecessarily languish in agony for nearly two years.

VI. CAUSES OF ACTION

104. All conditions precedent to Plaintiff's recovery have occurred or have been waived, excused, or otherwise satisfied. All notices required have been provided or were waived, excused, or otherwise satisfied.

COUNT I

Due Process and Equal Protection (Against All Defendants)

105. Plaintiff repeats and incorporates by reference ¶¶ 1–104, specifically ¶¶ 15, 33, 43, 84–87, 95–102, and 103 above, as though fully set forth herein.

106. No state shall deprive any person, including Plaintiff, of life, liberty, or property, without due process of law; nor deny to any person, including Plaintiff, within its jurisdiction the equal protection of the laws under the U. S. Constitution Amendments V and XIV Section 1 and all persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property under 42 U.S.C. § 1981(a).

107. All Defendants gross misconduct was based purely on discrimination and their hate for gay people.

108. As a result of All Defendants' intentional discrimination toward Plaintiff, a gay citizen, they effected an unlawful arrest and imprisonment of Plaintiff to further harass him.

109. Instead of protecting Plaintiff's life, liberty, and property, and protecting him equally, Defendants targeted Plaintiff for false arrest and false imprisonment.

110. Defendants' actions were done under color and pretense of law and they were oblivious to Plaintiff's rights and to due process of law.

111. Fillingim perjured himself in the Affidavit for Arrest Warrant, unlawfully used to falsely arrest and imprison Plaintiff depriving Plaintiff of life, liberty, or property, without due process of law; and denying Plaintiff the equal protection of the laws.

112. Plaintiff had a constitutional right to test the legality of his arrest.

113. Fry became liable for this cause of action when he denied Plaintiff his fundamental constitutional right to access and use the court system. This right is based on the First, Fifth and Fourteenth Amendments to the Constitution. Under the First Amendment, Plaintiff has the right to "petition the government for a redress of grievances," and under the Fifth and Fourteenth Amendments, he has a right to "due process of law." Put together, these provisions mean that Plaintiff must have the opportunity to go to court if he thinks his rights have been violated.

114. Additionally, Fry violated Plaintiff's rights under Florida Statute 941.10, titled Rights of accused person; application for writ of habeas corpus. This statute mandates an accused person's right to apply for a writ of habeas corpus. Fry denied Plaintiff this right.

115. Florida Statute 941.11, titled Penalty for noncompliance with s. 941.10, stipulates that any officer, Fry, in willful disobedience to s. 941.10, shall be guilty of a misdemeanor of the second degree, punishable of imprisonment not exceeding 60 days.

116. Judges do not enjoy immunity from engaging in crimes. Fry's violation of Florida Statute 941.11 is a crime and if and when a judge commits a crime, that judge is acting outside their discretion.

117. Fitzmartin stood by when Fillingim falsely arrested Plaintiff and in violation of Plaintiff's rights to due process of law and equal protection under the laws, he was compliant with arresting and imprisoning Plaintiff with the hope of discovering evidence to connect Plaintiff to the death.

118. Defendants acted with malice or with reckless disregard for Plaintiff's rights, proximately causing Plaintiff to continue to suffer from psychological harm, mental distress, humiliation, embarrassment, fear, and defamation of his character and reputation, was prevented from attending to his usual duties and underwent psychological treatment, entitling Plaintiff to damages that exceed the jurisdiction of this Court.

119. By reason of the above, Plaintiff's reputation has been greatly injured and has been brought into public scandal, disrepute, and disgrace, and he has suffered great emotional trauma and harm.

COUNT II
Presumption of Innocence
(Against All Defendants)

120. Plaintiff repeats and incorporates by reference ¶¶ 1–119, specifically ¶¶ 84-87, 95-102, and 103 above, as though fully set forth herein.

121. All citizens shall be presumed innocent under U. S. Constitution Amendments V, VI and XIV and in all criminal prosecutions, the accused shall enjoy the right to an impartial jury of the State and district wherein the crime shall have been committed under U. S. Constitution Amendment VI.

122. Fillingim presumed Plaintiff was guilty or hoped that he was. Fillingim resorted to perjuring himself in his Affidavit for Arrest Warrant to deceive the judge who issued the

warrant through misrepresentation. Fillingim's falsified affidavit caused the judge to presume Plaintiff was guilty of a crime.

123. Fry stated that he would not even consider the probable cause as part of Plaintiff's request to test the legality of his arrest, indicating Fry's presumption the Plaintiff was guilty.

124. Fitzmartin let Plaintiff endure 625 days in jail, presuming Plaintiff was guilty of murder and hoping each day that evidence would surface to support his presumption of guilt.

125. Plaintiff was not part of any criminal act but the frustrated Defendants intentionally chose to punish Plaintiff, for reasons known best by each of them.

COUNT III
False Arrest
(Against Fillingim)

126. Plaintiff repeats and incorporates by reference ¶¶ 1-125, specifically ¶¶ 84-87 above, as though fully set forth herein.

127. The Fourth Amendment protects a person's right to be free from unreasonable searches and seizures; provides that warrants shall issue only upon probable cause, supported by oath or affirmation.

128. Plaintiff was placed in handcuffs and held against his will for 625 days as a result of Fillingim's Affidavit for Arrest Warrant, which falsified probable cause. Fillingim fabricated false facts to promote a false motive for Plaintiff to commit murder and he left all of the exculpatory evidence out of the document.

129. As a result of Fillingim's perjured affidavit, Plaintiff was willfully detained without his consent and without authority of law.

130. As a result of the arrest and imprisonment Plaintiff, being Citizen of the United States, was subjected to deprivations of his rights, privileges, and immunities secured by the

Constitution of the United States. Sustained deprivations of his personal liberties, invasions of his privacy, and violations of his civil rights, caused Plaintiff to suffer and he will continue to suffer from psychological harm, mental distress, humiliation, embarrassment, fear, and defamation of their character and reputation. Plaintiff is prevented from attending to his usual duties and he underwent psychological treatment, all to his damages that exceed the jurisdiction of this Court.

131. By reason of the above, Plaintiff's reputation has been greatly injured and has been brought into public scandal, disrepute, and disgrace, and he has suffered great emotional trauma and harm.

132. Fillingim's actions have proximately resulted in material damages to Plaintiff.

133. Plaintiff is entitled to recover compensatory damages, special damages and punitive damages.

COUNT IV
False Imprisonment
(Against All Defendants)

134. Plaintiff repeats and incorporates by reference ¶¶ 1–133, specifically ¶¶ 84-87, 95-102, and 103 above, as though fully set forth herein.

135. The Fourth Amendment protects a person's right to be free from unreasonable searches and seizures; provides that warrants shall issue only upon probable cause, supported by oath or affirmation.

136. Because of Defendants' malicious actions, Plaintiff was imprisoned and deprived of his liberty without cause for a period of 625 days.

137. Plaintiff was willfully imprisoned without his consent and without authority of law.

138. All Defendants participated to wrongfully hold Plaintiff against his will, a violation of equal rights under 42 U.S.C. § 1981(c).

139. Beginning on April 27, 2022, Plaintiff was taken into custody and held against his will, initiated by Fillingim's falsified Affidavit for Arrest Warrant that contained fabricated probable cause and deceived the judge who signed it.

140. Fry became liable for this false imprisonment claim when he denied Plaintiff his fundamental constitutional right to access and use the court system. Fry's noncompliance with the law caused Plaintiff to unlawfully remained imprisoned.

141. Fitzmartin is liable for this cause of action for causing Plaintiff to be imprisoned for 625 days before filing a motion to dismiss on January 12, 2024, which states: "the State is unable to make a prima facie case at this time." Clearly, if the State could not make a case on Plaintiff's 625th day in jail, it was not able to do so on days 1-624.

142. As a result of the imprisonment, Plaintiff, being a Citizen of the United States, was subjected to deprivations of his rights, privileges, and immunities secured by the Constitution of the United States, sustained deprivations of his personal liberties, invasions of his privacy, and violations of his civil rights, has suffered and will continue to suffer from psychological harm, mental distress, humiliation, embarrassment, fear, and defamation of his character and reputation, was prevented from attending to his usual duties and underwent psychological treatment, all to his damages that exceed the jurisdiction of this Court.

COUNT V
Harassment
(Against Fillingim and Fitzmartin)

143. Plaintiff repeats and incorporates by reference ¶¶ 1-142, specifically ¶¶ 34-87, and 103 above, as though fully set forth herein.

144. Florida Statute 784.048 protects a person's right to be free from conduct directed at a specific person that causes substantial emotional distress in such person and serves no legitimate purpose.

145. Fillingim's perjured Affidavit for Arrest Warrant did cause the false arrest of Plaintiff. On April 27, 2024, Plaintiff was arrested and imprisoned for a third time by DPD. While it is assumed that other DPD officers were connected to Plaintiff's first two unlawful arrests and imprisonments, Fillingim is completely responsible for this third illegal act.

146. DPD essentially passed the baton to Fillingim for him to continue DPD's harassment campaign, which targets Plaintiff.

147. DPD first arrested Plaintiff on May 18, 2016, and held him against his will following a preplanned "stakeout and high-risk apprehension operation" to execute two warrants to "examine, photograph, and fingerprint" Plaintiff and Vodicka. DPD officers forced Plaintiff to the ground with a firearm touching Plaintiff's head, arrested him without an arrest warrant, and held him against his will for more than nine hours without food or access to a restroom. There were no charges and Plaintiff was ultimately released from his confinement. These events caused substantial emotional distress and the conspiracy served no legitimate purpose.

148. DPD's second false arrest and imprisonment involved a preplanned scheme to entrap and falsely charge Plaintiff with prostitution on October 20, 2016. Plaintiff was falsely arrested and imprisoned. Plaintiff was required to pay a bond to avoid long term imprisonment and was released from jail. The district attorney was unable to prosecute the case as there was no evidence for a prostitution case. However, for the enjoyment of harassing Plaintiff, the charge was not dropped for a period of nearly two years. Days before the statute ran, the charges were dropped without explanation. Plaintiff's lawyer made 14 court appearances for the case that

never was. A discovery request has been made for the anything involving the case but DPD has destroyed all *evidence* for the case.

149. DPD's third false arrest and imprisonment of Plaintiff occurred when Fillingim fabricated false facts in his Affidavit for Arrest Warrant to arrest and imprison Plaintiff for murder on April 27, 2022. As well, Fillingim lied to the Grand Jury to cause the indictment of Plaintiff and this most serious of accusations caused Plaintiff to spend 625 days in jail. But like DPD's previous harassment of Plaintiff on October 20, 2016, there was no evidence or even probable cause to support the case, the charges were dropped, the case was dismissed, and Plaintiff was released from jail.

150. DPD's pattern of harassment is undeniable and Fillingim has fully participated in the abusive acts targeting Plaintiff.

151. Fitzmartin was assigned to prosecute the murder charge that DPD has hung around Plaintiff's neck. His actions evidence an unlawful scheme to arrest first and hope to find evidence later. On Plaintiff's 625th day of imprisonment, Fitzmartin asked the court to dismiss the case for lack of evidence. Plaintiff's first day spent in jail constituted harassment. Each of the 625 days Plaintiff spent in jail, for a case that never had evidence, reflects 625 separate acts of harassment, clearly establishing Fitzmartin's lengthy pattern of conduct.

152. The persistent unwanted behavior of Fillingim and Fitzmartin caused Plaintiff's severe and long-lasting emotional distress.

153. As a result of the harassment, Plaintiff, being a Citizen of the United States, was subjected to deprivations of his rights, privileges, and immunities secured by the Constitution of the United States, sustained deprivations of his personal liberties, invasions of his privacy, and violations of his civil rights, has suffered and will continue to suffer from psychological harm,

mental distress, humiliation, embarrassment, fear, and defamation of his character and reputation, was prevented from attending to his usual duties and underwent psychological treatment, all to his damages that exceed the jurisdiction of this Court.

COUNT VI
Abuse of Process
(Against All Defendants)

154. Plaintiff repeats and incorporates by reference ¶¶ 1–153, specifically ¶¶ 84-87, 95-102, and 103 above, as though fully set forth herein.

155. This cause of action is a tort arising from misuse of the court process and is a violation under 42 U.S.C. § 1981, equal rights under the law.

156. Fillingim's perjury in his Affidavit for Arrest Warrant and to the Grand Jury resulted in Plaintiff's arrest and indictment using unlawful means.

157. Fry denied Plaintiff his right to challenge the legality of his false arrest when he refused to set a hearing for Plaintiff's motion for writ of habeas corpus. Fry's perversion of court process was a criminal act, which caused Plaintiff's unlawful extradition.

158. After Plaintiff spent 625 days in jail, Fitzmartin finally admitted that he did not have a case to present at trial. Fitzmartin's arrest first and prove later method of prosecution effectively punished Plaintiff by assuming guilt instead of innocence.

159. All Defendants' actions described above denied Plaintiff's equal rights under the law.

160. By reason of the above, All Defendants acted willfully, with malice or with reckless disregard for Plaintiff's rights, proximately causing Plaintiff to continue to suffer from psychological harm, mental distress, humiliation, embarrassment, fear, and defamation of his

character and reputation, were prevented from attending to his usual duties and underwent psychological treatment, entitling Plaintiff to damages that exceed the jurisdiction of this Court.

161. By reason of the above, Plaintiff's reputation has been greatly injured and has been brought into public scandal, disrepute, and disgrace, and have suffered great emotional trauma and harm.

COUNT VII
Persons Under Color of Law Liability
(Against All Defendants)

162. Plaintiff repeats and incorporates by reference ¶¶ 1-161, specifically ¶¶ 84-87, 95-102, and 103 above, as though fully set forth herein.

163. All persons within the jurisdiction of the United States are protected against impairment by nongovernmental discrimination and impairment under color of State law under 42 U.S.C. § 1983. The provision under 18 U.S.C. § 242 makes it a crime for someone acting under color of law to willfully deprive a person of a right or privilege protected by the Constitution or laws of the United States. Acts under "color of law" include acts not only done by federal, state, or local officials within their lawful authority, but also acts done beyond the bounds of that official's lawful authority, if the acts are done while the official is purporting to or pretending to act in the performance of his/her official duties. Persons acting under color of law within the meaning of this statute include police officers, judges, and others who are acting as public officials.

164. Fillingim perjured himself in his Affidavit for Arrest Warrant used to arrest Aubrey. When he signed the falsified affidavit, he pretended to act in his official duties, however, his misrepresentations to the judge who was deceived by the document were beyond Fillingim's lawful authority.

165. Purporting to act in his capacity as a judge, Fry denied Plaintiff his right to challenge the legality of his false arrest when he refused to set a hearing for Plaintiff's motion for writ of habeas corpus. Florida law stipulates that Fry's actions constitute a criminal act. Fry acted outside his discretion as he does not have lawful authority to commit criminal acts.

166. While acting as an assistant district attorney, Fitzmartin violated Plaintiff's rights to equal protection under the law and presumption of innocence when he caused Plaintiff to spend 625 days in jail without evidence needed to take Plaintiff's case to trial. Fitzmartin's actions directed at Plaintiff were not within his lawful authority.

167. All Defendants acted under color of law, together and with others, with malice or with reckless disregard for Plaintiff's rights, proximately causing Plaintiff to continue to suffer from psychological harm, mental distress, humiliation, embarrassment, fear, and defamation of his character and reputation, was prevented from attending to his usual duties and underwent psychological treatment, entitling Plaintiff to damages that exceed the jurisdiction of this Court.

168. By reason of the above, Plaintiff's reputation has been greatly injured and has been brought into public scandal, disrepute, and disgrace, and he has suffered great emotional trauma and harm.

COUNT VIII
Conspiracy Liability
(Against All Defendants)

169. Plaintiff repeats and incorporates by reference ¶¶ 1-168, specifically ¶¶ 84-87, and 95-102 above, as though fully set forth herein.

170. If two or more persons conspire for the purpose of depriving, either directly or indirectly, any person of equal protection of the laws, or of equal privileges and immunities under the laws; the acts constitute a conspiracy under 42 U.S. Code § 1985(3).

171. All Defendants conspired and deprived Plaintiff his equal protection of the laws causing injury to Plaintiff.

172. Fillingim did not act alone in his unlawful pursuit to arrest Plaintiff and indict him with a charge for murder. He coordinated with the Broward County Sheriff's Department to make the false arrest on April 27, 2024. Fillingim traveled with another DPD officer (unidentified) to Broward County to participate with local sheriff's deputies in the arrest of Plaintiff. Plaintiff's false arrest violated his rights to equal protection of the laws and Plaintiff was injured as a result of the conspiracy.

173. Initially, Fry agreed to hold a hearing for Plaintiff's motion for writ of habeas corpus. That changed after Fry conspired with Michael Tobolowsky, Ira Tobolowsky's son, to extradite Plaintiff to Texas even if Plaintiff's rights would be violated. It was Plaintiff's right under the laws to challenge the legality of his false arrest. At a hearing, Fry stated that he had spoken with Michael Tobolowsky and Fry's attitude towards Plaintiff's rights changed. Fry denied Plaintiff his right to be heard on a motion for writ of habeas corpus, a violation of Plaintiff's rights to equal protection of the laws. Plaintiff was injured as a result of the conspiracy.

174. Fitzmartin conspired with Fillingim to lie to the Grand Jury to effect Plaintiff's indictment.

175. All Defendants acted under color of law, together and with others, with malice or with reckless disregard for Plaintiff's rights, proximately causing Plaintiff to continue to suffer from psychological harm, mental distress, humiliation, embarrassment, fear, and defamation of his character and reputation, was prevented from attending to his usual duties and underwent psychological treatment, entitling Plaintiff to damages that exceed the jurisdiction of this Court.

176. By reason of the above, Plaintiff's reputation has been greatly injured and has been brought into public scandal, disrepute, and disgrace, and he has suffered great emotional trauma and harm.

COUNT IX
Intentional Infliction of Emotional Distress
(Against All Defendants)

177. Plaintiff repeats and incorporates by reference ¶¶ 1-176, specifically ¶¶ 84-87, 95-102, and 103 above, as though fully set forth herein.

178. This cause of action arises from emotional shock suffered by Plaintiff as a result of All Defendants' extreme and intentional outrageous conduct, causing Plaintiff severe and ongoing emotional distress. All Defendants conduct would be considered shocking or scandalous by an average member of the community. This claim is a violation of the U. S. Constitution Amendment VI.

179. On April 27, 2022, Plaintiff was arrested and charged with a murder that occurred nearly six years prior on May 13, 2016. Plaintiff had been heavily investigated and harassed by DPD for the incident in 2016. Because Plaintiff is innocent of any crime, DPD never uncovered any evidence to connect Plaintiff to the crime. DPD detectives working on the murder case in 2016 stated in sworn documents they did not have evidence to present a Grand Jury and the case went cold. Fillingim joined DPD and he also was unable to discover any evidence for the murder case. However, Fillingim was hungry to hang Plaintiff for the crime so he perjured himself in his Affidavit for Arrest Warrant, which shockingly caused Plaintiff's false arrest and false imprisonment for 625 days. Fillingim's acts of perjury and the injury it caused Plaintiff goes beyond all possible bounds of decency. Plaintiff's false imprisonment of 625 days is outrageous.

180. Plaintiff was taken into custody at the Broward County jail with extradition to Texas looming. The content in Fillingim's Affidavit for Arrest Warrant was laughable and Plaintiff had the right to challenge the legality of his false arrest. Every arrested person who is subject to extradition has rights under the law to challenge the legality of their arrest.

181. On July 28, 2022, following an ex parte meeting with Michael Tobolowsky, Fry, acting in his capacity as a judge, violated Plaintiff's right to access the court and be heard on a writ for habeas corpus motion. Acting outside his capacity, Fry issued an Order denying Plaintiff's right to be heard and releasing Plaintiff to Texas authorities. Fry's actions constitute a second-degree misdemeanor under Florida law. The fact that Fry committed a crime to expedite extradite Plaintiff's extradition is outrageous and caused Plaintiff irreparable injury.

182. Plaintiff spent 625 days in jail and a result of the actions of assistant district attorney Fitzmartin. At no time during the 625 days of Plaintiff's incarceration did the State have a case against Plaintiff. Nothing had changed or developed since May 13, 2016. Fitzmartin filed a motion to dismiss the case on January 12, 2024, due to lack of evidence, but he could have as easily filed the same motion while Plaintiff was falsely imprisoned in the Broward County jail for 126 days. Fitzmartin's complacent and long-lasting violation of Plaintiff's right to be free was extreme and atrocious behavior that caused Plaintiff irreparable injury.

183. By reason of the above, All Defendants actions were outrageous. They acted willfully, with malice or with reckless disregard for Plaintiff's rights, proximately causing Plaintiff to continue to suffer from psychological harm, mental distress, humiliation, embarrassment, fear, and defamation of his character and reputation, were prevented from attending to his usual duties and underwent psychological treatment, entitling Plaintiff to damages that exceed the jurisdiction of this Court.

184. By reason of the above, Plaintiff's reputation has been greatly injured and has been brought into public scandal, disrepute, and disgrace, and have suffered great emotional trauma and harm.

COUNT X
Negligent Infliction of Emotional Distress
(Against All Defendants)

185. Plaintiff repeats and incorporates by reference ¶¶ 1–184, specifically ¶¶ 85, 95-97, and 103 above, as though fully set forth herein.

186. This cause of action arises from emotional shock suffered by Plaintiff as a result of All Defendants' extreme and intentional outrageous conduct causing Plaintiff severe and ongoing emotional distress. All Defendants conduct would be considered shocking or scandalous by an average member of the community. In Florida, negligent infliction of emotional distress is subject to the "impact rule," which stipulates a defendant must have acted negligently, and this negligence must have physically impacted the plaintiff.

187. On April 27, 2022, Fillingim caused the false arrest of Plaintiff. Woken from his sleep with pounding on the front door of his home, Plaintiff opened the door to find many law enforcement officers with firearms pointing to Plaintiff. Dressed only in his boxers, Plaintiff was placed in handcuffs and escorted to one of the many sheriff's vehicles up and down the street. Fillingim was present with another DPD officer. This event has permanently injured Plaintiff so that every time there is a knock at the door, Plaintiff freezes and experiences post-traumatic stress disorder.

188. While incarcerated in Broward County jail, Plaintiff was placed in handcuffs and shackles when attending a hearing in Fry's courtroom. Wearing the black striped uniform and shuffling into the courtroom was traumatic for Plaintiff. In his 61 years Plaintiff had never worn

such clothes and never had worn shackles. Fry's required physical restraints were humiliating and have caused Plaintiff much anxiety as a result.

189. Plaintiff spent 625 days in jail as a result of Fitzmartin's unlawful and continuous false imprisonment. Anytime Plaintiff was moved from his cell he was restrained with handcuffs contributing to his anxiety and inability to sleep.

190. All Defendants unlawful actions directed at Plaintiff have severely impacted his mental condition, which required psychiatric evaluation and medication while incarcerated. All Defendants unlawful actions caused Plaintiff to be placed in Broward County jail's suicide watch on one occasion and Dallas County jail's suicide watch on two occasions. Each suicide watch included monitoring by psychiatric professional.

191. All Defendants actions were outrageous. They acted willfully, with malice or with reckless disregard for Plaintiff's rights, proximately causing Plaintiff to continue to suffer from psychological harm, mental distress, humiliation, embarrassment, fear, and defamation of his character and reputation, were prevented from attending to his usual duties and underwent psychological treatment, entitling Plaintiff to damages that exceed the jurisdiction of this Court.

192. By reason of the above, Plaintiff's reputation has been greatly injured and has been brought into public scandal, disrepute, and disgrace, and have suffered great emotional trauma and harm.

VII. PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff requests that Defendants be required to appear and answer herein, and that upon trial hereof, Plaintiff have judgment against Defendants as follows: Judgement against Defendant for Plaintiff's actual damages in an amount within the jurisdictional limits of this Court and proven at time of trial;

A. For an award of compensatory damages, exemplary damages and consequential damages against All Defendants, jointly and severally, for amounts that exceed the minimal jurisdictional limits of this court;

B. For an award of nominal damages against All Defendants, jointly and severally;

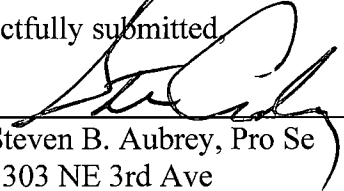
E. For an award of Plaintiff's attorney's fees and costs incurred in prosecution of this action against Defendants, jointly and severally;

F. For such other and further equitable relief as this Court deems just and proper.

JURY DEMAND

Plaintiff requests trial by jury in this above-styled action.

Respectfully submitted,

By: 

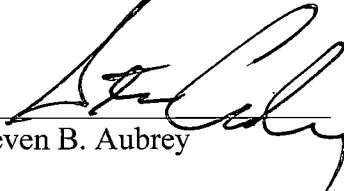
Steven B. Aubrey, Pro Se
3303 NE 3rd Ave
Oakland Park, FL 33334
Telephone: (645) 201-5813
defamationperse@yahoo.com

CERTIFICATION AND CLOSING

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: April 26, 2024.


Steven B. Aubrey

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Steven B. Aubrey

(b) County of Residence of First Listed Plaintiff Broward County, FL
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

John D. Fry, Brian Fillingim, and Glen A. Fitzmartin

County of Residence of First Listed Defendant Broward County, FL
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known) FILED BY [Signature] D.C.

APR 26 2024

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 ☐ 1 Incorporated or Principal Place of Business In This State ☐ 4 ☐ 4
- Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business In Another State ☐ 5 ☐ 5
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance	☐ 310 Airplane	☐ 625 Drug Related Seizure of Property 21 USC 881	☐ 422 Appeal 28 USC 158	☐ 375 False Claims Act
☐ 120 Marine	☐ 315 Airplane Product Liability	☐ 690 Other	☐ 423 Withdrawal 28 USC 157	☐ 376 Qui Tam (31 USC 3729(a))
☐ 130 Miller Act	☒ 320 Assault, Libel & Slander		INTELLECTUAL PROPERTY RIGHTS	☐ 400 State Reapportionment
☐ 140 Negotiable Instrument	☐ 330 Federal Employers' Liability		☐ 820 Copyrights	☐ 410 Antitrust
☐ 150 Recovery of Overpayment & Enforcement of Judgment	☐ 340 Marine		☐ 830 Patent	☐ 430 Banks and Banking
☐ 151 Medicare Act	☐ 345 Marine Product Liability		☐ 835 Patent - Abbreviated New Drug Application	☐ 450 Commerce
☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)	☐ 350 Motor Vehicle	LABOR	☐ 840 Trademark	☐ 460 Deportation
☐ 153 Recovery of Overpayment of Veteran's Benefits	☐ 355 Motor Vehicle Product Liability	☐ 710 Fair Labor Standards Act	☐ 880 Defend Trade Secrets Act of 2016	☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 160 Stockholders' Suits	☐ 360 Other Personal Injury	☐ 720 Labor/Management Relations	SOCIAL SECURITY	☐ 480 Consumer Credit (15 USC 1681 or 1692)
☐ 190 Other Contract	☐ 362 Personal Injury - Medical Malpractice	☐ 740 Railway Labor Act	☐ 861 HIA (1395ff)	☐ 485 Telephone Consumer Protection Act
☐ 195 Contract Product Liability		☐ 751 Family and Medical Leave Act	☐ 862 Black Lung (923)	☐ 490 Cable/Sat TV
☐ 196 Franchise		☐ 790 Other Labor Litigation	☐ 863 DIWC/DIWW (405(g))	☐ 850 Securities/Commodities/Exchange
		☐ 791 Employee Retirement Income Security Act	☐ 864 SSID Title XVI	☐ 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	IMMIGRATION	☐ 865 RSI (405(g))	☐ 891 Agricultural Acts
☐ 210 Land Condemnation	☒ 440 Other Civil Rights	☐ 462 Naturalization Application	FEDERAL TAX SUITS	☐ 893 Environmental Matters
☐ 220 Foreclosure	☐ 441 Voting	☐ 465 Other Immigration Actions	☐ 870 Taxes (U.S. Plaintiff or Defendant)	☐ 895 Freedom of Information Act
☐ 230 Rent Lease & Ejectment	☐ 442 Employment		☐ 871 IRS—Third Party 26 USC 7609	☐ 896 Arbitration
☐ 240 Torts to Land	☐ 443 Housing/ Accommodations			☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
☐ 245 Tort Product Liability	☐ 445 Amer. w/Disabilities - Employment			☐ 950 Constitutionality of State Statutes
☐ 290 All Other Real Property	☐ 446 Amer. w/Disabilities - Other			
	☐ 448 Education			
		PRISONER PETITIONS		
		☐ 463 Alien Detainee		
		☐ 510 Motions to Vacate Sentence		
		☐ 530 General		
		☐ 535 Death Penalty		
		Other:		
		☐ 540 Mandamus & Other		
		☐ 550 Civil Rights		
		☐ 555 Prison Condition		
		☐ 560 Civil Detainee - Conditions of Confinement		

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

18 U.S.C. §242; 28 U.S.C. § 1331; 28 U.S.C. §1332; 28 U.S.C. §1343; and 28 U.S.C. §1343(a)(b).

Brief description of cause:

Plaintiff alleges civil rights violations including but not limited to false arrest, false imprisonment, conspiracy under color of law and others.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

5,000,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

April 26, 2024

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE